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## **How do we define „WORKER” in the European Union**

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**Abstract:** The citizens who exercise their right of free movement are protected by the dispositions of European Union regarding coordination of social security. A person can travel between countries from European Union in order to search for a job, according his qualification and his studies. Free movement is a means of creating a European employment market and of establishing a more flexible and more efficient labor market, to the benefit of workers, employers and Member States. It is common ground that labor mobility allows individuals to improve their job prospects and allows employers to recruit the people they need. It is an important element in achieving efficient labor markets and a high level of employment. We can say that Romania is a country of migrants. According to official government estimates are about 3 million Romanian workers in EU countries. I followed that this article to ensure an efficient and accurate information on the term "worker" and the possibilities for labor migration in EU countries in accordance with the principle of freedom of movement. A novelty of this article is represented by comment on various approaches, nuances and connotations that were associated with the concept of "worker" by different authors.

**Keywords:** worker; labor market; work relationship; free circulation; social security

### **Introduction**

The European Union is based on principles such as: liberty, democracy, civil rights and basic freedom, as well as obeying the principal of the state governed by law.

Having a job and a complete workforce are basic elements with a view to guaranteeing equal chances for all people and also contributes to fully participating of the citizens in the cultural, social and economic life.

Any citizen of a UE state has the right to look for a working place in other state witch is member of EU and benefits from same services as the citizens of the host member state from behalf of the national agencies of workforce. The UE legislation regarding the workforce guarantees the minimum level of protection which applies to all persons who live and work in the European Union.

### **1. Consideration Regarding the Concept of “Worker”**

According to the art. 39 (2) from the European Community Treaty, related to the free circulation it is stipulated that any citizenship discrimination is forbidden, among the workers of the member states, regarding the employment, salary and other working conditions.

The European law norms do not define the term “worker”; however, the European Community Treaty consists of some elements which can lead to the clarifying of the nations such as: employment, workplace, salary/income and working conditions.

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In essence the worker is in an employment relationship that involves subordination to the employer (Ținca, 2005, p. 63). Consequently, the worker is the person who goes from one EU member state, other than his native one, in order to find a working place, to hire and to develop an activity, having proper working, without any discrimination.

The EU Court of Justice had an important role in order to clarify the term “worker”, considering that this notion can be interpreted on basis of community law, in an extensive way (CJE, 1982, p. 1035). In return, the norms that consist of exceptions and derogations from the free circulation have to be restrictively interpreted (CJE, 1986, p. 433-434).

On defining the concept of “worker”, the European Court of Justice used criteria which concentrate on the existence of a work report and an income for it (Ștefan & Andreșan-Grigoriu, 2007, p. 385). Therefore, the worker was defined as the person who, for a certain period of time, develop a paid activity for or being controlled by other person.

The term “worker” is much wider in the sense of working community law, in comparison with the meaning used in the national labor law. Thus, we consider that the right to free circulation can be extended also to the persons who are looking for work in other EU state, and the EU states have to permit them the entrance on their territories in order to study the workforce market and to make the necessary forms in order to be employed (Popa Nistorescu, 2008, p. 62). To the one that is looking for work can be asked by the EU state to leave their territory 6 month from their entrance if he cannot prove that he is still looking for a workplace and has the chance to be hired.

If the definition had been left at the hands of EU states, according to their interests to protect the workforce market, a part of the persons which rights are acknowledged, wouldn't have had the possibility to perform (Gornig & Rusu, 2007, p.158).

The European Court of Justice refers to the relation to work not to the work contract when they want to define the work “worker”. This term, with an extensive sphere, has to be conforming to the objective criteria which characterize this type of relation, while considering the rights and obligations of the people involved. The essential characteristic of the work relationship is the circumstance that a certain person develops, in a certain period of time, in favor of other person and under its heading, some activities as a response to which they earn a certain sum of money. It has also to be involved the carrying out of a real and effective activity because neither the more or less increased productivity, neither the origin of remuneration resources or the nature of the judicial link which connect the worker to the employer, can have consequences regarding the recognition of a person as worker (CJE, 1989, p. 1621).

By worker, one should understand as all the persons that in this quality and named in whichever other way find them caught in varied national systems of social security. This term refers to any person that carrying out or not a professional activity has the status of an insured person, according to the legislation regarding social security of one or several state members (Țiclea & Gîlcă, 2008, p. 15).

According to the Regulation no. 1408/71, a person has the quality of worker if his or her situation is characterized on the one hand by the fact that he or she contributed to the financing of that particular regime as a wage earner worker and, on the other hand, he or she is entitled to earnings in case of disease and especially to complete earnings according to the importance of due.

According to the Court of Justice, the wage earner worker or the assimilated worker is the worker that named in whichever other way is insured in varied national systems of social security. The term of wage earner worker or assimilated worker as shown in the Regulation of CEE Council entails the persons who, at first mandatory affiliated to social security as workers, were afterwards admitted to benefit from an optional insurance governed by the regulations of internal law, similar to the principles of mandatory insurance.

According to the same Regulation, the wage earner worker and the worker that carries out an independent activity can have the following traits:

- a) Any person that is insured on grounds of permanent mandatory or voluntary insurance against one or more unpredicted events, in compliance with the branches of a social security regime that applies to wage earner workers and to workers that develop an independent activity or in compliance with a special regime for office workers.
- b) Any person that is insured on grounds of mandatory insurance for one or more risks covered by the branches of social security that are entailed in the current Regulation, within a social security regime that applies to all residents or to the entire active population.
- c) Any person that is insured on grounds of mandatory insurance for one or more risks covered by the domains of the current Regulation, within a standard social security regime that applies to the entire rural population.
- d) Any person that is insured on grounds of voluntary insurance for one or more risks covered by the domains entailed in the current Regulation, within a member state's social security regime organized for salaried workers, for workers that develop independent activities or for all residents or for certain categories of residents.

Also, according to article 7, paragraph 3 from Directive 2004/38, a European Union citizen who is no longer a worker or the person that develops an independent activity maintains the status of worker or person that develops an independent activity under the following conditions:

- a) He or she is in temporary incapacity of working, as a result of a disease or accident;
- b) He or she is registered properly as being in involuntary unemployment, after being employed for a period of over a year and registered at the relevant office for work force placement as a person in search of a workplace;
- c) He or she is registered as being in involuntary unemployment, after completing a work contract on a determined period, with the duration of under a year or after becoming unemployed involuntarily during the first 12 months and registered at the relevant office for work force placement as a person in search of a workplace, in this case the status of worker being maintained for a period of at least 6 months;
- d) He or she is starting a stage of professional training, excepting the case when the person is in involuntary unemployment, the status of worker being maintained only if the training is related to the former professional activity.

The term of independent worker does not have a European meaning, for the interpretation of the term of independent activity, one is sent to consult the legislation of the member state. Thus, the Court settled that „by independent activity, one should understand the activities appreciated in this way by the applicable legislation in social security of the member state where these activities are developed.” (CJCE, 1997, p. 1-609, pct. 20)

According to European regulations, the insured worker is not exclusively the one that is currently employed. The Lisbon Treaty and the Regulation do not have as a purpose solely the protection of the current employee, but their purpose is also insuring the one that giving up a job is given the possibility to occupy a new workplace. When internal law gives unemployed persons the right of voluntarily affiliating to social security of salaried persons and when the affiliation has been confirmed and accepted, this measure can be considered, under certain conditions, as a means of insuring those persons as workers. This happens if the so-called benefit is granted to interested persons as a consequence of the fact that, on the one hand they formerly had the status of workers and, on the other hand, they are qualified of acquiring this status again (CJCE, 1964, p. 371).

- **The border worker** is any wage earner worker or any worker that develops an independent activity on the territory of o member state and who has residency on the territory of another member state where he or she comes back usually every day or at least once a week.

A border worker who is detached in another place, on the territory of the same member state or of another member state by the enterprise to which he is normally attained, or who carries out services on the territory of the same or another member state, maintains the status of border worker for a period that is not longer than 4 months, even though during these four months he cannot come back every day or at least once a week at his residency place.

The status of border worker is granted solely to the workers that, on one hand have the residency in another state than the state where they work and who, on the other hand, come back to the residency state every day or at least once a week.

It has to be stated that a worker who, after moving to a state different than the one in which he works and does not come back in the latter state, does not have the status of a border worker.

- **The detached worker** is the worker that, for a limited period of time, works on the territory of a member state, a different member state than the one where he normally works. The length of being detached cannot be more than 12 months (it can be prolonged with another 12 months). During this entire period, must exist a direct connection of employment between the employer and the detached worker. The term of worker is the one that applies in the legislation of the member state where the worker is detached.

Community jurisprudence and usual practice settled certain criteria in order to determine the existence of a direct relationship between the employing enterprise and the detached worker, as follows:

- The work contract is still applicable between the two parties;
- The decision to cease the working contract by dismissal has to be made exclusively by the enterprise which makes the detachment;
- The enterprise that detached the worker has to keep its competence of determining the „nature” of the work developed by the detached worker, not in terms of defining the details of the type of work that has to be done and the way it should be done, but in general terms of determining the final product of the work or the basic service that has to be offered;
- The worker’s payment obligation belongs to the employing enterprise, the one that makes the detachment, no matter who is the one that actually makes the payment;

Besides being temporary and impossible to use in order to replace a worker, the traits of regular detachment are:

- Continuity, during the detachment, of the worker’s subordination in relation with the employing enterprise;
- Development of working activity in favor of the employing enterprise;

In Europe, the legal regulations are represented by the Directive of the European Parliament on of the Council 96/71/CE of 16th of December 1996 regarding the detachment of workers carrying put services, published in the Official Journal of European Communities (OJEC) no L 018 of 21st of January 1997. This Directive does not regard neither the treaties between the Community and other states, nor the legislation of member states in the field of foreign persons that carry out services on their territory, as this directive does not regard the national legislation about admission conditions, settling and occupying a workplace for national workers of third party countries.

The member states have transposed the Directive 96/71/CE regarding the detachment of workers in their own national legislation or adapted the existing legislation to it. Every country settled a linking office whose main purpose is to offer information regarding terms and conditions of work placement applicable to detached workers in a specific member state. In Romania, the Directive 96/71/CE was transposed by the Law no. 344 of 19th of July 2006 regarding the detachment of salaried workers.

There are four situations when the existing regulations exclude a priori the application of detachment provisions, especially when:

- The enterprise where the worker was detached makes him/her available for another enterprise in the same member state;
- The enterprise in which the worker is detached makes him/her available for another enterprise in a different member state, according to the provision of the European Parliament’s and Council’s Directive 96/71/CE of 16th of December 1996 regarding the detachment of workers, published in the Official Journal of the European Communities ( OJEC), no. L 018 of 21st of January 1997;

- The worker is recruited in a member state in order to be sent by an enterprise situated in a second member state to an enterprise situated in a third member state;
- The worker is recruited in a member state by an enterprise situated in a second member state, so that he/she could work in the first member state;

In these cases, the reasons why detachment cannot be applied are clear: the complexity of the relationships forced by these situations, as well as the lack of any guarantee of the existence of a working relationship between the enterprise that makes the detachment and the detached worker are in obvious contrast with the purpose of avoiding both administrative complications and fragmentation of the existent history of insurance, which after all is the whole meaning of the provisions governing detachment.

### **- Temporary worker**

Community law refers to the term of temporary worker (Directive no. 91/383/CEE of completing the measures meant to encourage the improvement of workers' security at the workplace for workers that have a working contract on a determined or temporary duration (OJEC, 1991), as well as the one of part-time workers (Framework Agreement of 6th of June 1997 regarding work with partial duration signed by the Union of Industrial and Patronal Confederations in Europe, The European Centre of Public Enterprise and the European Confederation of Syndicates and applied by the Directive 97/81/CE.) (OJEC, 1998)

The number of persons that work part-time has grown considerably in the last years. One of the reasons is the more flexible attitude of the employers towards the family life of the employees. According to the legislation regarding the protection of employees at the workplace, the part-time employees benefit from the same rights as the full-time employees, although in some cases part-time employees will have to work a minimal number of hours for a determined period of time in order to acquire some rights from the work legislation.

The number of persons that have chosen to work based on contracts of temporary work (or on contracts with determined object) has grown in the latest period. Employees that work successively based on temporary work contracts benefit from protection in case of dismissal. However, to file a complaint based on the provisions of the Act regarding dismissals, it is necessary that the employees should have worked for at least one year. According to the law regarding the protection of employees that work based on temporary contracts, the employers cannot prolong continuously the temporary work contracts. Employees can work for a period of maximum four years based on temporary contracts. After this term, it is considered that employees have a contract on undetermined period (for example, a permanent contract).

## **2. The Doctrine and the Romanian Legislation regarding the Concept of the Worker**

The Romanian doctrine uses the term of worker for: salaried workers regardless of the nature or the type of their work contract, unemployed persons and persons incapable of work because of an accident or professional disease (Ștefănescu, 2010, p. 56). On the contrary, there are excluded from the notion of workers persons that carry out liberal professions, including handicraftsmen and individual entrepreneurs and any other person that carries out independent, unsubordinated activities. Office workers are also excluded from the notion of „workers”.

The Romanian legislator took the term of worker from the European regulations used in the normative documents that regulate security and health in work. The law 319/2006 defines the worker as „any person hired by an employer, including the apprentice interns, excluding the stay-at-home personnel”, but this definition is applicable solely in the field of security and health in work.

### 3. Conclusions

Ensuring the fully application of the principle of free movement for Romanian workers in the European Union's space is a priority. The mobility of the work force is an accentuation of the person's free movement in the union's space, a fundamental principle of the European's Union. According to the provisions of the Adhesion Act of Romania and Bulgaria to the European Union, maintaining the restrictions on the work force market for the citizens of the two countries in the last transitory period (2012-2013) is justified just in the case of appearance or the risk of appearance of severe perturbations on the work force market of the states that apply the restrictions.

By the Resolution of 15th December 2011, the European Parliament requested the member states to ensure an equal treatment for Romanian and Bulgarian citizens, according to the provisions of the Union's treaties. Also, a recent report of the European Commission, elaborated at the request of Romania and Bulgaria, shows the fact that the free movement of workers does not create turbulences on the work force markets, but, on the contrary, it contributes to the economic growth of member states that have opened their work market.

On the 31st of December 2011, the second transitory period expired, in which, according to the Proceedings to the Adhesion Act of Romania and Bulgaria to the EU, the member states of EU can restrict the access on the work market for the citizens of the two countries. If risks of perturbations should appear, the limitations imposed on the work market for Bulgarian and Romanian workers may be maintained until the 1st of January 2014, after this date the circulation of these workers being unconditionally liberalized.

Nine member states of the European Union will argue on Friday their decisions of restricting the access of Romanian and Bulgarian workers on the work market until the end of 2013, within the European Council of Work and Social Politics Ministers. The economic situation and the lack of social security, fueled by the financial crisis, will be presented as main arguments by the majority of these states. The EU states were able to impose restrictions for Romanian and Bulgarian workers only if there were some serious problems on the local work market or if there was a peril that these problems should appear. The European Commission can decide to impose penalties if it establishes that the situation was not like that, but this possibility is very unlikely. The last nine states of EU that restrict the access of Romanian and Bulgarian workers are Austria, Belgium, Germany, Holland, Luxembourg, Malta, France, Great Britain and Ireland.

European Commission's priority is improving employment conditions of workers in Europe. One of its objectives is to develop a modern labor market, flexible and inclusive. Romanian's purpose continues to be the opening, as soon as possible, of the work market for Romanian citizens in the European Union's states.

### 4. References

- Ținca, O. (2005). *Drept social comunitar - Drept comparat. Legislație Română /Social Community Law – Comparative Law. Romanian Law*. Bucharest: Lumina Lex.
- Stefan, T., Andresan-Grigoriu, B. (2007). *Drept comunitar/Community law*. Bucharest: C. H. Beck.
- Popa Nistorescu, C. (2008). Libera circulație a lucrătorilor în spațiul comunitar/Free circulation of workers in European space. *Revista de Științe Juridice/Juridical Science Magazine*, No. 4.
- Gornig, G. & Rusu, I.E. (2007). *Dreptul Uniunii Europene/European Union Law*, second edition. Bucharest: C. H. Beck.
- Țiclea, A. & Gîlcă, C. (2008). Libera circulație a lucrătorilor în Uniunea Europeană/Free movement of workers in the European Union. *Revista Dreptul Muncii/Labor law Magazine* No. 5.
- Ștefănescu, I.T. (2010). *Tratat teoretic și practic de dreptul muncii/Theoretical and practical treaty of labor law*. Bucharest: Universul Juridic.